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10/777,859	02/12/2004	Chuck Buis	CQC - 1 - P	6112

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CHESAPEAKE, VA 23320

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

**Office Action Summary**

Application No.

10/777,859

Applicant(s)

BUIS ET AL.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                 |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                            | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/4/04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species:

- I. Holster with belt slots, Figures 1-4b, 6-7b, claims 1-8 & 10-13.
- II. Holster with U-shaped clipping portion, Figures 5a-5c, claims 1-4 and 9.

The species are independent or distinct because species I and II are directed to related inventions. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed are not capable of use together and have a materially different design and mode of operation. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction were not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper. Holsters with belt attachment means like that of species I are typically classified in 224/671. Holsters with belt attachment means like that of species II are typically classified in 224/666.

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2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-4 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

3. During a telephone conversation with Peter A. Shaddock II on 10/11/06 a provisional election was made without traverse to prosecute the invention of species I, claims 1-8 and 10-13. Affirmation of this election must be made by applicant in replying to this Office action. Claim 9 has withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on 6/4/04 is noted. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statement.

***Specification***

5. The abstract of the disclosure is objected to because it contains the legal phraseology "means". Correction is required. See MPEP § 608.01(b).

***Drawings***

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment shown in Figures 6-7 having adjustment means within the slots, as recited in claim 8, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 8 depends from claim 7, which is concerned with the embodiment of Applicant's invention comprising three belt slots, two of which are arranged in a vertical orientation on one side of the holster holder opposite the third. Applicant has disclosed that this arrangement of slots is a replacement or alternative to the embodiment having two slots where the two slots each have an adjustment means in the slot (page 11). Claim 8 recites that in the embodiment having three slots, the slots also have the adjustment means in the slots. Applicant has not disclosed this feature and has actually taught away from including such adjustment means in the embodiment with three slots.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

10. Claims 1-8 and 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 12, and 13 each recite that a third slot has a "mustache shape". Examiner is of the position that mustaches can have any number of different shapes. The claims are therefore indefinite because the metes and bounds of the limitation "mustache shape" are unclear.

Claims 1, 7, 10, 11, 12, and 13 each recite "the relative angle of the holster to the plate". There is insufficient antecedent basis for this limitation in the claims. The holster is capable of forming various angles relative to the plate in more than one axis. One such angle is that shown by Applicant, where the holster can rotate or tilt while in close contact with the plate. Another angle could be formed about a different axis if some of the screws were loosened such that the holster leaned outward from the plate at an angle, such as would happen if the upper screws were looser than the lower screw. Because of these multiple interpretations, this limitation in the claims is also unclear.

Claims 2 and 4 recite the limitation "the plate wall". There is insufficient antecedent basis for this limitation in the claims.

Claim 4 recites the limitation "the heads of the screws". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1, 3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogers et al. (US 6,010,045 A).

Regarding claim 1, Rogers et al. disclose a holster holder for securing a holster to a wearer in a desired attitude, the holster holder comprising a plate (11); three arcuate slots (19,20) having fastening means (15,17) extending there through, one slot (20) having a mustache shape and being below the others; wherein the fastening means engage a holster (10) and the holster is rotatably mounted to the plate (abstract).

Regarding claim 3, Examiner is of the position that the bolts (15,17) of Rogers et al. are effectively screws as they mate with T-nuts (16,18) in a screw-like fashion.

Regarding claim 5, the plate of Rogers et al. includes two more slots through which fastening means (13) are used to attach a belt support (12) for receiving or securing the plate to a user's belt.

13. Claim 10 is rejected under 35 U.S.C. 102(e) as being anticipated by Parsons (US 2004/0188477 A1).

Parsons discloses a holster holder for securing a holster (22) to a wearer in a desired attitude, the holster holder comprising: a plate (40); means for attaching a holster to the plate (30, [0024]); and at least two slots (48a,48b) defined through the



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plate for receiving and securing a wearer's belt to the plate; and adjustment means (54) extending through each slot that would allow for adjusting the relative height and angle of the plate with respect to the belt.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. (US 6,588,640 B1) in view of Nichols (US 5,265,781 A).

Rogers et al. disclose a holster holder (Figure 2) for securing a holster to a wearer in a desired attitude, the holster holder comprising a plate and three fastening slots (28), one fastening slot being below the others; and two belt slots (47). Rogers et al. fail to disclose the three slots being arcuate such that the holster can rotate with respect to the plate, the lowest slot having a mustache shape, and also fail to specifically state that fasteners are passed through the slots for attaching a holster to the plate.

Nichols, however, also discloses a holster holder comprising a plate with a series of slots and teaches that fasteners (screws 44) pass through the slots to attach a holster to the plate. Nichols also teaches that the slots (40,42) are arcuate such that the holster can rotate with respect to the plate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the holster holder of Rogers.

et al. by forming the slots with an arcuate shape and attaching a holster to the plate with screws, as taught by Nichols, so that a user could rotate the holster with respect to the plate in order to adjust the angle at which a gun was held at their side. Regarding the lowest slot, Examiner considers the modified lowest slot of Rogers et al. to have a mustache shape.

16. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640) in view of Nichols as applied to claim 1 above, and further in view of Beletsky (US 5,875,944 A).

Regarding claim 2, the modified Rogers et al. holster holder includes the claimed features except for the plate having a series of indents formed therein for selective positioning of the holster on the plate.

Beletsky, however, also discloses a holster holder having arcuate slots (23, 24) and teaches that the plate also has indents (23T,23B,24T,24B) formed with the slots that allow the holster to be adjusted to predefined angles based upon the positioning of fasteners (16,17) in the indents. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the modified Rogers et al. holster holder by including a series of indents in the plate along with the already existing slots, as taught by Beletsky, so that a user could selectively adjust the holster to a predefined angle.

Regarding claim 4, the heads of the screws of the modified Rogers et al. holster holder would engage the selected indents of the plate during the normal use and operation of the holster holder.

17. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640) in view of Nichols as applied to claim 5 above, and further in view of Parsons.

The modified Rogers et al. holster holder includes the claimed features except for each of the two belt slots comprising adjustment means for adjusting the height and angle at which the belt passes through the slot.

Parsons, however, teaches that it is already known in the art to provide belt slots with adjustment means (54) that serve to change the length of the slots [0031]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also include adjustment means in the belt slots of the modified Rogers et al. holster holder, as taught by Parsons, so that a user could adjust the length of the belt slots to accommodate different sized belts, or to adjust the height and angle at which the belt passes through the slot. All of these functionally intended uses would be allowed by the presence of such adjustment means.

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640), Nichols, and Beletsky as applied to claim 2 above in view of Baker (US 3,731,858 A).

The modified Rogers et al. holster holder includes the claimed features except for there being three belt receiving slots wherein two of the belt receiving slots are formed in a vertical manner such that one is above the other.

Baker, however, teaches that it is old and well known in the art to provide three belt slots on a holster device, two of the belt slots being arranged in a vertical manner such that the holster can be held at various angles depending on which of the belt slots

are used to support the holster on a belt. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include three belt slots on the modified Rogers et al. holster holder, as taught by Baker, in order to increase the adjustability of the holster and allow the user to selective position the holster in a greater number of orientations.

19. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640), Nichols, Beletsky, and Baker as applied to claim 7 above in view of Parsons.

The modified Rogers et al. holster holder includes the claimed features except for each of the two belt slots comprising adjustment means for adjusting the height and angle at which the belt passes through the slot.

Parsons, however, teaches that it is already known in the art to provide belt slots with adjustment means (54) that serve to change the length of the slots [0031]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also include adjustment means in the belt slots of the modified Rogers et al. holster holder, as taught by Parsons, so that a user could adjust the length of the belt slots to accommodate different sized belts, or to adjust the height and angle at which the belt passes through the slot. All of these functionally intended uses would be allowed by the presence of such adjustment means.

20. Claims 10 are 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640) in view of Parsons and Baker.

Rogers et al. disclose the claimed invention except for adjustment means in the belt slots and there being there being three belt receiving slots wherein two of the belt receiving slots are formed in a vertical manner such that one is above the other.

Parsons, however, teaches that it is already known in the art to provide belt slots with adjustment means (54) that serve to change the length of the slots [0031]. Parsons also teaches that it is already known in the art to provide two belt slots arranged in a vertical manner on one side of a holster holder. Similarly, Baker teaches that it is old and well known in the art to provide three belt slots on a holster device, two of the belt slots being arranged in a vertical manner such that the holster can be held at various angles depending on which of the belt slots are used to support the holster on a belt. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjustment means in the belt slots of the Rogers et al. holster holder, as taught by Parsons, and to include three belt slots on the Rogers et al. holster holder, as taught by Baker, in order to increase the adjustability of the holster and allow the user to selective position the holster in a greater number of orientations.

21. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640) in view of Parsons and Nichols.

Rogers et al. disclose the claimed invention except for adjustment means in the belt slots and the three holster-attaching slots being arcuate such that the holster can rotate with respect to the plate, the lowest slot having a mustache shape. Rogers et al. also fail to specifically state that fasteners are passed through the slots for attaching a holster to the plate.

Regarding the adjustment means, Parsons, teaches that it is already known in the art to provide belt slots with adjustment means (54) that serve to change the length of the slots [0031]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also include adjustment means in the belt slots of the Rogers et al. holster holder, as taught by Parsons, so that a user could adjust the length of the belt slots to accommodate different sized belts, or to adjust the height and angle at which the belt passes through the slot. All of these functionally intended uses would be allowed by the presence of such adjustment means.

Regarding the arcuate slots and fasteners, Nichols discloses a holster holder comprising a plate with a series of slots and teaches that fasteners (screws 44) pass through the slots to attach a holster to the plate. Nichols also teaches that the slots (40,42) are arcuate such that the holster can rotate with respect to the plate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the modified Rogers et al. holster holder by forming the slots with an arcuate shape and attaching a holster to the plate with screws, as taught by Nichols, so that a user could rotate the holster with respect to the plate in order to adjust the angle at which a gun was held at their side. Regarding the lowest slot, Examiner considers the modified lowest slot of Rogers et al. to have a mustache shape.

22. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers et al. ('640) in view of Parsons and Baker as applied to claim 11 above, and further in view of Nichols.

The modified Rogers et al. holster holder includes the claimed features except for the three slots being arcuate such that the holster can rotate with respect to the plate, the lowest slot having a mustache shape, and also fail to specifically state that fasteners are passed through the slots for attaching a holster to the plate.

Nichols, however, also discloses a holster holder comprising a plate with a series of slots and teaches that fasteners (screws 44) pass through the slots to attach a holster to the plate. Nichols also teaches that the slots (40,42) are arcuate such that the holster can rotate with respect to the plate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the modified Rogers et al. holster holder by forming the slots with an arcuate shape and attaching a holster to the plate with screws, as taught by Nichols, so that a user could rotate the holster with respect to the plate in order to adjust the angle at which a gun was held at their side. Regarding the lowest slot, Examiner considers the modified lowest slot of Rogers et al. to have a mustache shape.

### ***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

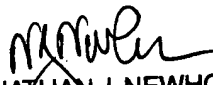
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
10/17/06

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER